

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

OAH No. 2013060406

C.A.,

Claimant,

vs.

EASTERN LOS ANGELES REGIONAL
CENTER,

Service Agency.

DECISION

This matter was heard by Julie Cabos-Owen, Administrative Law Judge with the Office of Administrative Hearings, on August 23, 2013, in Alhambra, California. C.A. (Claimant) was represented by his father, A.A., and his mother, P.A., who are his authorized representatives.¹ Eastern Los Angeles Regional Center (ELARC or Service Agency) was represented by its Fair Hearing Coordinator, Judy Castaneda.

Oral and documentary evidence was received. The record was closed, and the matter was submitted for decision on August 23, 2013.

ISSUE

Should ELARC be required to continue funding social skills training through Helping Hands, in addition to funding DIR®/Floortime?²

¹ Claimant's last name and the names of his family members are omitted throughout this Decision to protect their privacy.

² "DIR®/Floortime" refers to a therapy method called the Developmental, Individual-Difference, Relationship-Based model.

FACTUAL FINDINGS

1. Claimant is a 6-year-old male client of the Service Agency, diagnosed with Autism. He lives at home with his parents and his older brother. (Ex. SA3.)

2. At the most recent Individualized Program Plan (IPP) meeting in February 2013, Claimant's mother noted that he displayed aggressive behaviors at home (pinching, hitting, scratching, kicking and throwing items) and occasionally engaged in tantrums. At the time of the 2013 IPP, Claimant was enrolled in a special education kindergarten classroom, and was receiving speech therapy (60 minutes per week) and occupational therapy (45 minutes per week). He was reported to be non-compliant and to engage in attention-seeking behaviors in the classroom. (Ex. SA3.)

3. Claimant now attends first grade in a special education classroom for autistic children. His neighborhood lacks other children his age, and he does not have friends with whom he comes in contact outside of school. (Testimony of P.A.; Ex. SA3.)

4. Beginning 2011, Claimant has received DIR®/Floortime (floortime) services, provided by Real Connections Child Development Institute (Real Connections) and funded by the Service Agency.

5(a). The Real Connections Program Design indicates that it is a "DIR Model (aka 'Floortime') with "interventions to help children make progress through nine established functional-emotional stages by engaging the consumer's own intentions and emotions in the process of learning. The model is based on current neurological and developmental knowledge indicating that brain development and learning progress through interactive relationships with caregivers rather than through rote memorization of scripts and skills." (Ex. SA4, p. 1.)

5(b). The Program Design also indicates: "Real Connections serves children of all ages with developmental challenges and their families. We specialize in preschool age children with newly diagnosed disorders of autism and pre- to mid-adolescent children with ongoing peer socialization difficulties." (Ex. SA4, p. 4.)

5(c). The Program Design also notes: "Peer socialization dates will be encouraged for children with social behavior difficulties. The developmental specialist will be available for social behavior facilitation." (Ex. SA4, p. 5.)

6. In September 2012, Claimant began receiving 1.5 hours per week of Social Skills Therapy services from Holding Hands Pediatric Therapy & Diagnostics (Holding Hands), funded by the Service Agency.

7(a). Prior to providing Claimant's services, Holding Hands conducted a Social Skills Assessment on August 4, 2012. At that time, his "Current Level of Play/Play Skills" was noted as follows:

[Claimant] presents with the ability to interact with peers with minimal support from caregivers. He is able to engage in parallel and associative play depending on his ability to maintain regulated. [Claimant] is able to interact with a peer when provided with support, but he often withdraws quickly from the activity and engages in solitary play.

(Ex. SA7.)

7(b). "Recommended Social Skills Goals" included turn-taking, cooperative play, and transitioning. Parents were given homework to complete as well, in order to help them implement a generalization plan across various settings. The generalization plan was stated as follows:

The ultimate goal of the Social Skills Program is for the child to continue to address and expand developed social skills in the home, school and community settings. Providing opportunities for the child to expand social skills in other environments will allow them to practice and integrate developed social skills in realistic social settings. . . .

(Ex. SA7.)

7(c). Helping Hands recommended that Claimant receive 1.5 per month of social skills training, over a six-month period.

8(a). In August 2012, both Real Connections and Helping Hands provided Progress Reports for Claimant.

8(b). The Real Connections DIR/Floortime Progress Report for August 2012 contained the following summary:

[Claimant] is currently authorized to receive 11 hours of services per week including parent training, direct 1:1 intervention, and supervision. . . . [Claimant's] parent turned to Floortime services with the intent to help [Claimant] in his social functioning with both peers and with his older brother and themselves at home. . . .

In the past 6 months [Claimant] has made developmental strides in several areas, though his developmental gains are still vulnerable to stress and the dysregulation that it causes.

[Claimant] has grown particularly in his desire and ability to engage and communicate with his family, Floortime Player, and peers. . . .

[A]t this time, 11 hours per week including parent training, direct intervention, and supervision are requested to support [Claimant's] program.

The goals set forth in the report included: self-regulation and attention; engagement and relating; behavioral organization and problem solving; and representational communication and elaboration.

(Ex. SA5.)

8(c). The Holding Hands Social Skills Progress Report for August 2012 contained a review of Claimant's progress and recommendations as follows:

[Claimant] presents with significant progress in his social skills abilities. With moderate to maximum support, [Claimant] is able to engage in back and forth turn taking, sustained shared play and attention, and use [of] his words with his peers to communicate his needs, wants and desires. [Claimant] is able to regulate his body effectively enough to sit down with his peer at the table and regulate his body with sensory breaks 40% of the time. [Claimant] now demonstrates the ability to understand follow group rules/directions. . . .

[¶] . . . [¶]

[Claimant] benefits from his group evidenced by his progress in his improved regulation, peer interactions and following the group schedule. Even though [Claimant] demonstrates good progress in his social skills group at Holding Hands, he continues to have deficits in the areas of: Initiation/Social Boundaries, Turn-Taking; [and] Transitions.

The clinical team recommends 1.5 hours per week over a 6-month period in order to work on Initiation/Social Boundaries, cooperative play and transitions.

(Ex. SA8.)

9. In January 2013, Real Connections provided Progress Report for Claimant. The report mirrored the August 2012, including the identical note that, "[Claimant's] parent turned to Floortime services with the intent to help [Claimant] in

his social functioning with both peers and with his older brother and themselves at home.” The goal areas remained virtually the same, and the report indicated that he was progressing in goal areas. (Ex. SA 6.)

10. In the February 2013 IPP, it was noted, with respect to Claimant’s socialization, that he was receiving up 55 hours per month of floortime services with Real Connections and five hours per month of social skills training through Holding Hands. (Ex. SA 3.)

11. In April 2013, Holding Hands sent a letter to regional centers informing them:

Beginning May 1, 2013, our social skills groups will be divided into three separate age groups, each with its own ecologically valid curriculum. The program will follow evidence-based guidelines for working with children with developmental disorders as well as utilizing evidence-based social skills training curriculum for teens and young adults. The new program will be referred to as Social Skills Training and not Social Skills Therapy.

For age group for children ages 3 through 6, the program name was “Early Intervention DIR®.” Curriculum topics included: How to Join a Playgroup; Listening with my Whole Body; Social Communication; Greeting Others; Symbolic Play; “Imagination Station;” How to Communicate to Make Friends; Transitions; Self-Control and Emotional Regulation; and Conflict Resolution.

(Ex. SA9.)

12. The Holding Hands Social Skills Program Overview (for its revised program) notes that each weekly group is held for 90 minutes, and a parent group is simultaneously run. The Program Overview also states:

The curriculum is designed for 16 weeks, and can be repeated 2 times for children that require more intensive services due to significant developmental challenges. Maximum duration in training is 1 year.

(Ex. 1.)

13. At the time Holding Hands was changing its program format, Claimant’s parents were unsure if the new format would be a “good fit” for him. At that time, they were concerned about Claimant’s ability to self-regulate in order to

engage in the new curriculum at Holding Hands' revised program. They requested to transfer his social skills services to another vendor. (Testimonies of P. A. and A.A.)

14. In a Notice of Proposed Action dated May 2, 2013, ELARC informed Claimant's parents that it was denying Claimant's "request to transfer social skills services currently received through Holding Hands to an alternate agency. ELARC will consider funding Social Skills training through Holding Hands to the end of the current authorization period August 31, 2013." The stated reason for ELARC's action was:

[ELARC] is currently funding for DIR/Floortime services with Real Connections at a rate of 40 hours per month. Goals for consumer . . . include Self-Regulation and Attention, Engagement and Social Communication, Representational Thinking / Pretend Play and Behavioral Organization and Sense of Self. Current goals with Holding Hands are considered similar to social skills training provided by Real Connections. Since the general outcome of these two agencies is to improve social skills, duplication of services has been reported based on progress reports. Parent is requesting a change in service provider due to new changes in Holding Hands program to a more curriculum based system. . . ."

(Ex. SA1.)

15(a). Claimant's parents filed a Fair Hearing Request on May 14, 2013. In the Fair Hearing Request, they noted that the reason for requesting a fair hearing was:

DIR/Floortime & Social Skills therapy may be similar but have different results for [Claimant]. DIR/Floortime is more adult 1-on-1 child led therapy while Social Skills is more structured peer-to-peer interaction therapy in a group setting which cannot be substituted for.

(Ex. SA1.)

15(b). Claimant's parents requested "Continuation of Social Skills therapy either with Holding Hands or a different vendor in addition to DIR/Floortime."
(Ex. SA1.)

16. At the fair hearing, Claimant's parents noted that, since their initial request, Claimant has attended the new Helping Hands program and they have been "delighted" with it. Consequently, the parties agreed that the issue is this matter would be limited to whether ELARC should be required to continue funding both Holding Hands and DIR/Floortime with Real Connections. (Testimonies of P. A. and A.A.)

17. Claimant completed one year in the original Holding Hands program. Thereafter, the Service Agency began funding for Claimant to attend the Holding Hands revised program. Claimant has completed a 16-week curriculum under the new Holding Hands Program. (Ex. SA 12; Testimonies of P.A. and A.A.)

18. On July 31, 2013, Holding Hands provided an Early Intervention Social Skills Training (Ages 3-6) Progress Report. The report reviewed Claimant's progress in the newly-designed program and recommended that he repeat the program for "one final," 16-week cycle, from August 19, 2013, through December 15, 2013. (Ex. SA 12.)

19. At some point prior to July 2013, Real Connections was made aware of the pending request for fair hearing. (Ex. 3; Testimony of P.A.)

20. In August 2013, Real Connections provided another Progress Report that was identical in parts to the August 2012 and January 2013 reports, except that: (1) the sentence noting that "[Claimant's] parent turned to Floortime services with the intent to help [Claimant] in his social functioning . . ." had been removed, and (2) the vendor recommended services to continue at "40 hours per month, including parent training, direct intervention, documentation, and supervision." (Ex. SA13.)

21. The Service Agency has a policy in place, effective since October of 2011, which addresses the Duplication of Services as follows:

Definition:

Duplication is defined as two or more services which address the same consumer need identified by an interdisciplinary team and are aligned with the same or similar need related outcome. This may include using a methodology or approach which crosses service categories and expands or circumvents an established service category.

Procedures:

If a service is proposed/requested and the service coordinator has concerns that there may be a duplication of service, then the SC shall have an ID Team discussion to address the concern. If it is deemed that the service request is clinical in nature then the consumer's chart will be routed to the appropriate clinician for review.

The Service coordinator shall include a memo that explains the purpose for the review and include any pertinent documentation along with the chart.

Using the record review form, the clinician shall review the documentation and provide his or her clinical impression as well as a basis for determination. In addition to reviewing for a duplication of service, the clinician shall make any recommendations for alternative services if an unmet need is identified.

(Ex. SA11.)

22. Claimant's Service Coordinator, Eduardo Santillan, testified credibly at the fair hearing. He recalled that Claimant's parents believed that Real Connections and Helping Hands were similar services with different outcomes. Real Connections is provided mainly in the home with the therapist working directly with Claimant. Mr. Santillan had contacted Jackie Stemen, Intake and Assessment Coordinator at Real Connections, to determine if that vendor could incorporate peers or a group goal into their program. He recalls that Real Connections was looking into whether it could incorporate that as a part of their design plan. He noted that Real Connections does encourage but does not force parents to coordinate a peer into the program and the therapist would work on peer to peer interaction. (Testimony of Eduardo Santillan.)

23. The Service Agency's School Age Unit Supervisor, Arturo DeLaTorre, testified credibly at the fair hearing. He could not explain why the Service Agency initially authorized the funding of Holding Hands when Claimant was already receiving services from Real Connections, but stated that it was "probably an oversight on his part." He noted that no other consumer in his unit was receiving both services. According to Mr. DeLaTorre, although there is a difference in the two vendors' implementation, the intent and the outcome of the service is the same: to increase Claimant's social skills. Additionally, he does not see a big difference between in-home floortime and the services through Holding Hands except that Holding Hands is "supplementing" what Real Connections is doing. He believes that, if Holding Hands is able to provide peer group interaction, which he admits may be a necessary area to target right now, he does not see why Real Connections is unable to do the same thing. Although he admitted that one solution would be to reduce the hours provided by Real Connections and to keep funding Helping Hands, he again noted that no other consumer is receiving services from both vendors. He explained that, if an agency is vendored to provide a service as set forth in its program design, it should provide what it says, "so [we] may need to go back to [Real Connections] to see why [it is] not [providing the service]". He is "not in favor" of using one vendor to supplement another. He noted that "children with autism need structure and consistency." (Testimony of Arturo DeLaTorre.)

24. At the fair hearing, the Service Agency argued that, while the two vendors' approaches were different, they had the same goal (to increase Claimant's social skills), and this is a duplication of services. According to the Service Agency, the major difference between Real Connections and Holding Hands is that Real

Connections supports socialization between Claimant and his parents, his brother and his therapist (and if they want a peer involved, they must organize a play date), whereas Holding Hands provides a group of peers so that Claimant's parents do not have to take that extra step of finding a peer. The Service Agency admitted that "a part is missing," from Real Connections, but "see[s] it as extra," rather than required.

25. At the fair hearing, Claimant's parents argued that, although both programs are "under the umbrella of DIR," what the Holding Hands program and the Real Connections program provide Claimant are different components / pieces of a whole program. Helping Hands is classroom-based with other students and structured, thematic activity. Real Connections is home-based, child-led, with the participants being Claimant, his parents, his therapist, and occasionally his brother. According to Claimant's parents, it would be ideal to be able to receive all of the necessary services from one provider, for example if Real Connections "had an office where [it could provide] 90 minutes [of social skills training] with other children." However, Real Connections does not provide that aspect of social skills training. Although Claimant may be the only child receiving services from both of these vendors, Claimant's parents do not believe that services should be provided in a "one size fits all" manner, and note that this combination of services is benefitting him. After completing the first 16 weeks of the Holding Hands revised program, Claimant's parents note that he has progressed, and they have all learned skills they can generalize into the natural environment. Claimant's parents believe he would continue to improve with additional social skills training from Holding Hands. As recommended by Holding Hands, he has only one more 16-week session for his age category.

LEGAL CONCLUSIONS

1. Claimant's appeal of the Service Agency's denial of continued funding for social skills training through Helping Hands, in addition to funding DIR®/Floortime through Real Connections, is granted. (Factual Findings 1 through 25; Legal Conclusions 2 through 8.)

2. Where a change in services is sought, the party seeking the change has the burden of proving that a change in services is necessary. (See Evidence Code sections 115 and 500.) Thus, in proposing to discontinue funding social skills training through Helping Hands, in addition to funding DIR®/Floortime, the Service Agency bears the burden of proving by a preponderance of the evidence that the change is necessary and that the services do not meet his needs. The Service Agency has failed to meet its burden.

3. Welfare and Institutions Code section 4512, subdivision (b) provides, in part:

[T]he determination of which services and supports are necessary for each consumer shall be made through the individual program plan process. The determination shall be made on the basis of the needs and preferences of the consumer or, when appropriate, the consumer's family, and shall include consideration of a range of service options proposed by individual program plan participants, the effectiveness of each option in meeting the goals stated in the individual program plan, and the cost-effectiveness of each option.

4. Welfare and Institutions Code section 4646 provides, in part:

It is the intent of the Legislature to ensure that the individual program plan and provision of services and supports by the regional center system is centered on the individual and the family of the individual with developmental disabilities and takes into account the needs and preferences of the individual and the family, where appropriate, as well as promoting community integration, independent, productive, and normal lives, and stable and healthy environments. It is the further intent of the Legislature to ensure that the provision of services to consumers and their families be effective in meeting the goals stated in the individual program plan, reflect the preferences and choices of the consumer, and reflect the cost-effective use of public resources.

5. Welfare and Institutions Code section 4646.5 provides, in part:

(a) The planning process for the individual program plan described in Section 4646 shall include all of the following:

[¶] . . . [¶]

(2) A statement of goals, based on the needs, preferences, and life choices of the individual with developmental disabilities, and a statement of specific, time-limited objectives for implementing the person's goals and addressing his or her needs. These objectives shall be stated in terms that allow measurement of progress or monitoring of service delivery. These goals and objectives should maximize opportunities for the consumer to develop relationships, be part of community life in the areas of community participation, housing, work, school, and leisure, increase control over his or her life, acquire increasingly positive roles in community life, and develop competencies to help accomplish these goals .

6. Welfare and Institutions Code section 4648, subdivision (a)(1), provides:

In order to achieve the stated objectives of a consumer's individual program plan, the regional center shall conduct activities including, but not limited to, all of the following:

(a) Securing needed services and supports.

(1) It is the intent of the Legislature that services and supports assist individuals with developmental disabilities in achieving the greatest self-sufficiency possible and in exercising personal choices. The regional center shall secure services and supports that meet the needs of the consumer, as determined in the consumer's individual program plan, and within the context of the individual program plan, the planning team shall give highest preference to those services and supports which would allow minors with developmental disabilities to live with their families, adult persons with developmental disabilities to live as independently as possible in the community, and that allow all consumers to interact with persons without disabilities in positive, meaningful ways.

7(a). As noted by Claimant's parents and by Holding Hands reports, Claimant has made progress toward his social skills goals by participating in the Holding Hands program. Additionally, by participating in the Real Connections program, Claimant also made progress toward the overall goal of socialization by way of specified goals (e.g. self-regulation and attention; engagement and relating; behavioral organization and problem solving). While both vendors are categorized as DIR®/Floortime vendors and are focused on socialization goals, the evidence established that the services actually provided are different. As pointed out by Claimant's parents and by Mr. Santillan and Mr. DeLaTorre, Real Connections is missing the peer group component that Helping Hands is providing. Although the Real Connections report noted that "[Claimant's] parent turned to Floortime services with the intent to help [Claimant] in his social functioning with both peers and with his older brother and themselves at home," this intended result does not automatically establish that Real Connections was providing the services to help Claimant's social functioning with his peers. In argument, the Service Agency dismissed the peer component missing from Real Connections as "extra" and unnecessary. However, the Service Agency's School Age Unit Supervisor noted that if an agency is vendored to provide a service (e.g. to help Claimant with social functioning with peers), as set forth in its program design, it should do so. Despite Real Connections' omission of the peer group component, Helping Hands is satisfying that necessary element of Respondent's social skill training. The evidence did not establish that the services provided by Helping Hands are unnecessary, but instead that they are necessary to

complete a program that best meets Claimant's needs, which were not being fully met through Real Connections.

7(b). The Service Agency has failed to prove by a preponderance of the evidence that discontinuing funding social skills training through Helping Hands is warranted at this time.


8. Nevertheless, the recommended duration of the Helping Hands program was not indefinite. The July 31, 2013 Holding Hands Early Intervention Social Skills Training Progress Report recommended that Claimant repeat the program for only "one final," 16-week cycle. As noted in Holding Hands' new program design, "The curriculum is designed for 16 weeks, and can be repeated 2 times for children that require more intensive services due to significant developmental challenges. Maximum duration in training is 1 year." Claimant has already completed a year of the original program and one 16-week session with the new program. A final 16-week cycle is the maximum recommended at this time.

ORDERS

1. Eastern Los Angeles Regional Center's denial of continued funding of social skills training through Helping Hands, in addition to funding DIR®/Floortime through Real Connections, is overruled. Claimant's appeal is granted.

2. The Service Agency shall provide funding for one additional 16-week cycle, 1.5 hours per week, of social skills training through Helping Hands.

DATED: August 30, 2013



JULIE CABOS-OWEN
Administrative Law Judge
Office of Administrative Hearings

NOTICE

This is the final administrative decision; both parties are bound by this decision. Either party may appeal this decision to a court of competent jurisdiction within 90 days.